

12 CIV. 0957

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**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

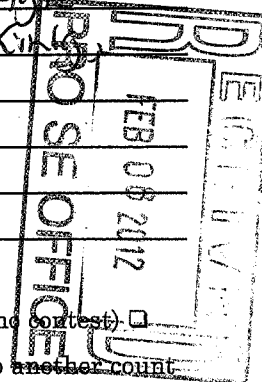
United States District Court		District <u>SDNY</u>
Name (under which you were convicted): <u>ABDUWALI ABDUKHADR MUSE</u>		Docket or Case No.: <u>09 CR. 512 (LAP)</u>
Place of Confinement: <u>FCT TERRE HAUTE (CMU)</u>		Prisoner No.: <u>70636-054</u>
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>v. ABDUWALI ABDUKHADR MUSE</u>

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: IN THE UNITED STATES DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK, NEW YORK.
- (b) Criminal docket or case number (if you know): 09 CR. 512 (LAP)
- (a) Date of the judgment of conviction (if you know): FEBRUARY 16, 2011 WAS SENTENCING, AND PLEAD GUILTY ON MAY 18, 2010.
- (b) Date of sentencing: FEBRUARY 16, 2011
- Length of sentence: 405 MONTHS.
- Nature of crime (all counts): Hijacking, Kidnapping, Hostage Taking, AND CONSPIRACY TO COMMIT Hijacking, Kidnapping, AND Hostage Taking.
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? PLEAD GUILTY TO COUNTS 2, 3, 5, 6, 8, AND 9 OF THE INDICTMENT AND THE REMAINING COUNTS WERE DISMISSED AS PART OF THE PLEA AGREEMENT.
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐



7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

"DID NOT FILE APPEAL"

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

N/A

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

N/A

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: LACKED KNOWLEDGE TO FILE PROSE AND COUNSEL STATED WE DID NOT NEED TO FILE AN APPEAL BECAUSE WE WOULD LOSE.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL by MISADVISING DEFENDANT. WHICH PREJUDICED DEFENDANT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
COUNSEL ADVISED THAT DEFENDANT WOULD ONLY BE CHARGED WITH ONE SLIP, AND DUE TO DEFENDANT NOT UNDERSTANDING THE ENGLISH LANGUAGE OR THE PROCEDURES OF THE PLEA AGREEMENT PROCEDURES, HE FOLLOWED HIS COUNSEL. EVEN WHERE NO PROMISE WAS MADE AND A GUILTY PLEA WAS ENTERED AS A RESULT OF A GRAVE MISUNDERSTANDING SOLELY ON THE PART OF DEFENSE COUNSEL AND NOT PARTICIPATED IN BY EITHER THE PROSECUTION OR THE JUDGE, THE INTERESTS OF JUSTICE REQUIRED THAT A DEFENDANT'S PLEA BE RELIEVED AND THE JUDGMENT OF CONVICTION VACATED.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: DID NOT FILE A DIRECT APPEAL.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

N/A

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

DID NOT FILE ANY OTHER MOTIONS OR PETITIONS
BESIDES THIS 28 USC § 2255 MOTION TO VACATE.

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO ARGUE JURISDICTION OF A JUVENILE WHICH PREJUDICED.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
DEFENDANT WAS ONLY 16 YEARS OF AGE AT THE TIME HE WAS ARRESTED AND WAS PLACED IMMEDIATELY IN AN ADULT CORRECTIONAL FACILITY, AND HOUSED WITH ADULTS. COUNSEL FAILED TO ARGUE THAT THE COURT HAD NO JURISDICTION OVER A JUVENILE WITHOUT A "WAIVER HEARING" AND INSTEAD MISADVISED THE DEFENDANT TO AGREE TO A AGE DIFFERENT TO HIS ACTUAL AGE, AND ALSO ADVISED HIM NOT TO MENTION HIS AGE TO THE PROBATION OFFICER OVER

his PRESENTENCE INVESTIGATION, WHICH RESULTED IN
A CLEAR MISCARriage OF JUSTICE

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

DID NOT FILE A DIRECT APPEAL.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

HAVE NOT FILED ANY MOTIONS OR PETITIONS OTHER
THAN THIS 28 U.S.C. § 2255 MOTION TO VACATE.

GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL FOR
FAILURE TO SEEK DISQUALIFICATION OF JUDGE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

COUNSEL FAILED TO SEEK DISQUALIFICATION OF THE JUDGE
AFTER SHE HEARD VICTIMS STATEMENTS AND BECAME
EMOTIONALLY ATTACHED TO THE CASE AND STARTED CRYING.
THIS FAILURE CAUSED GREAT PREJUDICE TO THE DEFENDANT
AND ALSO VIOLATES THE OPPORTUNITY TO FACE AN IMPARTIAL
DECISION MAKER. THE JUDGE SHOULD HAVE BEEN ASKED
BY DEFENSE COUNSEL TO DISQUALIFY HERSELF DUE TO BEING
LESS THAN IMPARTIAL AND EMOTIONALLY ATTACHED TO
THE CASE.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

DID NOT FILE A DIRECT APPEAL

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: Youth of defendant, Improper Advice by Counsel and Defendant's Mental State Affects Plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 THE PLEA SIGNED BY THE DEFENDANT WAS SOLELY ON THE IMPROPER ADVICE GIVEN BY COUNSEL, DEFENDANT'S MENTAL STATE, AND THE YOUTH OF THE DEFENDANT, ALL AFFECTED KNOWLEDGEABLE PLEA, AND IT WAS NOT SIGNED VOLUNTARILY WITH UNDERSTANDING OF WHAT WAS BEING SIGNED. JUST ON THE IMPROPER ADVICE OF COUNSEL, THE PLEA AND CONVICTION SHOULD BE VACATED.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

I HAVE NOT FILED ANY MOTIONS OTHER THAN
THE 28 U.S.C. § 2255.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

NONE OF THE GROUNDS HAVE BEEN
PREVIOUSLY PRESENTED TO THE COURT, DUE TO
THIS BEING THE FIRST MOTION FILED.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Philip WEINSTEIN

(b) At arraignment and plea: Philip WEINSTEIN

(c) At trial: THERE WAS NO TRIAL

(d) At sentencing: Philip WEINSTEIN

(e) On appeal: _____

N/A

(f) In any post-conviction proceeding: _____

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

N/A

(b) Give the date the other sentence was imposed: _____

N/A

(c) Give the length of the other sentence: _____

N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* _____

THE MOTION IS BEING FILED WITHIN
THE ONE YEAR LIMITATION.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

ADDITIONAL GROUNDS RAISED

GROUND FIVE

The sentence issued to defendant was illegal due to the Judge failing to recognize that youth must be considered a relevant mitigating factor. Because youth is more than a chronological fact. It is a time and condition of life when a person may be more susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years generally are less mature and also less responsible than adults. This failure would also show the Judge's lack of being impartial due to the emotional attachment to the case.

This issue was not raised on appeal or any other motion other than the present 28 U.S.C & 2255 motion.

GROUND SIX

The conviction was in violation of title 18 USCS & 5032, due to the fact that no transfer hearing was ever held, no notice was ever given to the defendant, his parents, or anyone. So any statement given by the defendant is not permissible at the criminal prosecution.

This issue was not raised on appeal or any other motion other than the present 28 U.S.C & 2255 motion.

GROUND SEVEN

The conviction was in violation of title 18 USCS & 5033, due to the fact that once the defendant was taken into custody as a juvenile, he should have been immediately advised of his rights in a language that juvenile may understand, the Attorney shall be immediately notified, and the juvenile's parents shall also be notified of the juvenile's custody. Due to the defendant being taken into custody in a country other than the United States, was

the reason that none of these procedures were followed, but that does not take away the fact that neglecting to follow these procedures resulted in a clear miscarriage of justice.

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C & 2255 motion.

GROUND EIGHT

The conviction was in violation of title 18 USCS & 5035, due to the fact that defendant was a juvenile while being detained, and was held in a institution where he had regular contact with adult persons convicted of crimes, and also those who were awaiting trial on criminal charges, which is a clear violation of the above mentioned title.

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C. & 2255 motion.

GROUND NINE

Involuntariness of plea, The plea was involuntary, knowing, and also intelligent because defendant was only 16 years old, had no prior experience with criminal justice system, had been diagnosed with having mental illness, and was not advised by judge that intent was element of the underlying offense, and also scared by Counsel that he would get life in prison if he did not plead guilty.

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C. & 2255 motion.

GROUND TEN

The district court lacked jurisdiction to impose sentence because the judge failed to make specific finding that 16 year old defendant would not derive benefit from treatment under Federal Youth Corrections Act.

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C & 2255 motion.

GROUND ELEVEN

Illegal interrogation. The police used trickery at the time of the defendant's arrest. Defendant and his companions were told that if they would surrender everyone that they would be let go to their country, and at the time of the agreement the defendant's companions were all shot and killed. Defendant was in a state of shock and should not have been interrogated. America betrayed the defendant. Defendant was also threatened due to the fact that he would not agree to being older than his actual age of 16 years old at the time of arrest. "A JUVENILE"

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C. & 2255 motion.

GROUND TWELVE

Violation of Miranda. Interrogating a juvenile without the presence of his or her parents consent; violates Miranda as well as due process.

This issue was not raised on appeal or anyother motion other than the present 28 U.S.C. & 2255 motion.

GROUND THIRTEEN

Ineffective assistance of counsel. Trial counsel was ineffective in failing to inform the defendant fully and correctly as to the actual terms of the plea agreement. Counsel told defendant that he was only being charged with one ship when defendant asked how America could charge him with ships from countries other than America. It was also improper for counsel to tell defendant to agree to whatever age that the government said he was and not to mention his age to the presentence investigation officer.

This issue was not raised on appeal or in anyother motion other than the present 28 U.S.C. & 2255 motion.

WHEREFORE, The mentioned addittional grounds are more issues to show why the conviction against the defendant should be vacated.

MUSE

Abduwali Abdukhadr Muse #70636-054

Therefore, movant asks that the Court grant the following relief: VACATE THE
SENTENCE AND CONVICTION

or any other relief to which movant may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 2/1
2012 (month, date, year).

Executed (signed) on 2/1/12 (date).

Muse
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

N/A

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]
